General Services Administration
Office of General Counsel
Washington, DC 20405

October 9, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Subject: Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187.

Dear Mr. Caton:

Enclosed please find the original and eighteen copies of the General Services Administration's Comments for filing in the above-referenced proceeding.

Sincerely,

Jody B. Burton

Jody B. Burton
Assistant General Counsel
Personal Property Division

Enclosures

cc: International Transcription Service
Jerry McKoy (diskette)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No.96-187

COMMENTS OF THE GENERAL SERVICES ADMINISTRATION

EMILY C. HEWITT
General Counsel

VINCENT L. CRIVELLA
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

JODY B. BURTON
Assistant General Counsel
Personal Property Division

Economic Consultant:

Snavely King Majoros O'Connor
& Lee, Inc.
1220 L Street, N.W.
Washington, D.C. 20005

GENERAL SERVICES ADMINISTRATION
18th & F Streets, N.W., Room 4002
Washington, D.C. 20405

October 9, 1996

Table of Contents

Summary

With the exception of its interpretations of the legal status of LEC filings, GSA is in substantial agreement with the majority of the tentative conclusions the Commission has reached relating to the streamlined tariff provisions of the 1996 Telecommunications Act.

The Commission notes that the "deemed lawful" terminology of the Act might be interpreted to suggest Congressional intent to modify the legal status of LEC tariffs filed on a streamlined basis. However, the lack of legislative history supporting any such interpretation and the absence of corresponding modifications elsewhere in the Communications Act provide little evidence that Congress intended to make such a sweeping change to the regulatory status of LEC tariffs, particularly a change that would harm rather than protect consumers. GSA believes that Congress simply intended to raise the burdens for suspending and investigating LEC tariffs filed on a streamlined basis.

GSA concurs with the Commission's conclusions that modifications of the terms, conditions or rates for existing services should be subject to streamlined treatment but that tariffs for new services should not be eligible for this regulatory procedure. This view is consistent with the Act and strikes the appropriate balance between reducing LEC regulatory burdens and protecting captive ratepayers.

GSA concurs with the majority of the Commission's proposals with respect to administrative processes for implementing the streamlining provisions of the Act. GSA offers additional suggestions with respect to consumer protections. GSA is highly supportive of the electronic filing system the Commission proposes. Such a system will

bring significant benefits to carriers and end users alike with little administrative burden.

GSA is concerned that reliance on post-effective review of streamlined tariffs would unnecessarily put ratepayers at risk, particularly if the Commission determines that challenges to the lawfulness of such tariffs are not subject to retroactive damage awards. GSA urges the Commission particularly to limit its reliance on post-effective review for LEC tariffs containing rate increases. These filings pose the greatest danger for abuse to captive ratepayers.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187

COMMENTS OF THE GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA"), on behalf of the customer interests of the Federal Executive Agencies, submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 96-367, released September 6, 1996. The NPRM addresses various aspects of the Commission's implementation of the streamlined tariff review provisions in the Telecommunications Act of 1996[1] for Local Exchange Carriers ("LECs").

I. Introduction

Pursuant to Section 111(a) of the Federal Property and Administrative Services Act of 1949, as amended 40 U.S.C. 759(a)(1), GSA is vested with the responsibility to represent the customer interests of the Federal Executive Agencies ("FEAs") before Federal and State regulatory agencies. Collectively, the FEAs are probably the largest

1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. (hereinafter "Act").

user of telecommunications services in the nation, employing millions of telephone numbers across the country.

GSA commends the Commission for its efforts to provide for a more streamlined and deregulated telecommunications industry. However, GSA is concerned that consumer protections may be diminished as a result of the Commission's well-intentioned efforts to achieve that goal. As discussed herein, this concern relates particularly to proposed changes with respect to the lawfulness of LEC tariffs filed on a streamlined basis.

II. Streamlined LEC Tariff Filings Under Section 402 of the Act

Consistent with its intent to foster competitive and deregulated telecommunications markets[2], Congress added Section 204(a)(3) to the Communications Act:[3]

> A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period as appropriate.[4]

---

2. Joint Statement of Managers ("Joint Explanatory Statement"), S. Conf. Rep. No. 104-230, 104th Cong., 2nd Sess.

3. The Communications Act of 1934, 47 U.S.C. 151 *et seq.*

4. Section 402 (b)(1)(A)(iii) of the Act (emphasis added).

Under current practice, the lawfulness of LEC tariffs that become effective without suspension and investigation can still be challenged, and damages resulting from an unlawful LEC charge may be awarded. As the Commission notes:

> Under [the filed rate] doctrine, the decision by the Commission not to suspend and investigate [a proposed rate] is not a determination of the lawfulness of the rate. Rather, it is merely a determination that the proposed rate does not raise questions of lawfulness sufficient to warrant institution of an investigation prior to the tariff's effective date. Thus, the lawfulness of the tariff subsequently may be challenged either in a complaint proceeding, commenced pursuant to Section 208(a), or in an investigation pursuant to Section 205. If a complaint is filed and the Commission determines that some element of the tariff is unlawful, the carrier may be required to pay damages pursuant to Section 207.[5]

LEC tariffs that become effective after Commission investigation and Order, however, are treated differently. In those cases, damages may be recovered only for future violations of a Commission Order. The Commission notes:

> The Supreme Court has held that once an agency has determined a rate to be lawful, the agency may not retroactively subject a carrier to reparations for charging that rate if the agency subsequently declares the rate to be unreasonable.[6]

---

5. NPRM, at paragraph 8.

6. Id., paragraph 9. See also *Arizona Grocery*, 284 U.S. at 390; *Las Cruces TV Cable v. F.C.C., American Tel. & Tel. Co. v. F.C.C.*, 836 F. 2d 1386, 1394 (D.C. Cir. 1988)(concurring opinion).

The Act and its legislative history are silent regarding the legal consequences of the "deemed lawful" provision in the new Section 204(a)(3). As a consequence, the Commission suggests two possible interpretations.

The first interpretation is that Congress intended to change the legal status of LEC tariffs so that successful challenges to the "lawfulness" of LEC tariffs filed on a streamlined basis could only recover damages for future violations of a Commission Order, not retroactive damages. In a case where a tariff was later found unlawful, this interpretation would subject ratepayers to onerous LEC charges (during the pendency of the challenge) for which recovery of damages is prohibited. GSA recommends this interpretation be rejected.

As the Commission recognizes, Congress provided no explanation of the intent of this provision, either in the body of the statute or in the Managers Explanatory Statement. GSA submits that the Commission would unreasonably assume an unstated intent of this provision if it made such a fundamental change to the regulatory framework of LEC tariffs. The Act made no corresponding changes to Sections 203, 205, 207 or 208,[7] and this interpretation of Section 204(a)(3) would appear to be in conflict with those sections. GSA submits that there is no evidence that Congress intended to alter the legal status of LEC tariffs.

---

7. 47 U.S.C. 203, 205, 207 and 208.

The second of the Commission's interpretations of "deemed lawful" is that Congress simply intended to establish higher burdens for suspensions and investigations.[8] Under this interpretation, LEC tariffs would be "presumed" to be lawful, and would shift the burden of proving otherwise to the petitioner. Tariffs would still be subject to complaint and investigation under Sections 208 and 205, and damages could be awarded for any period the tariff was in effect. While this interpretation does not eliminate all of the infirmities of the previous interpretation, GSA believes this interpretation is acceptable.

Currently, the tariff filings of price cap LECs are treated by the Commission in a similar fashion as is contemplated under this interpretation of the "deemed lawful" provision in the Act. As the Commission notes:

> ...price caps and pricing bands form a "no-suspension zone," and LEC rate filings that conform with these limits are "presumed lawful" after only limited review. If a LEC files rates outside the no-suspension zone, the presumption of lawfulness disappears, and the filing is subject to more rigorous scrutiny in the pre-effective-date tariff review process.[9]

There is a distinction, however, between this example and the general presumption of lawfulness that the Commission would award to all LEC tariff filings. The price no-suspension zones were established after consideration in a Commission proceeding. The criteria governing tariffs filed on a streamlined basis have not been established on the

---

8. NPRM, paragraph 12.

9. Id.

basis of a Commission proceeding. Nonetheless, GSA believes there is some merit in this interpretation.

By permitting retroactive damage awards, this interpretation retains a significant ratepayer protection. Indeed, while challenges to the lawfulness of LEC tariffs filed on a streamlined basis are made more difficult under this interpretation, ratepayers are at least protected from having to pay unlawful LEC charges without the possibility of recovering damages. This interpretation appears to strike a reasonable balance between the intent of Congress to streamline the tariff review process and the responsibility of the Commission to ensure protection of ratepayers.

III. LEC Tariffs Eligible for Filing on a Streamlined Basis

The Commission notes the potential ambiguity of Section 204(a)(3) as it relates to the types of LEC tariffs that are eligible for streamlined treatment.[10] The first sentence of Section 204(a)(3) appears to allow streamlined treatment of <u>any</u> LEC tariff filed with the Commission that contains a "new or revised charge, classification, regulation, or practice...." The second sentence, however, identifies only tariffs containing rate increases or rate decreases as "deemed lawful." The issue posed in the NPRM is whether streamlining should only apply to new or changed charges for <u>existing</u> services, or whether it applies also to new charges for <u>new</u> services.

---

10. NPRM, paragraph 16.

The Commission tentatively concludes that "all LEC tariff filings that involve changes to the rates, terms and conditions of existing service offerings are eligible for streamlined treatment."[11] GSA concurs with this conclusion.

The Commission solicits comments regarding the eligibility of "new" services for streamlined treatment. The Commission suggests that "new" service tariffs should be treated differently than tariffs containing changes to existing services. GSA concurs with the Commission's suggestion. GSA does not believe it is consistent with Congress's intent to "streamline" the tariff process for "new" services.

The Commission's current practice is routinely to subject LEC tariff filings containing "new" services to a higher degree of scrutiny and to require more supporting data than is needed for modifications to existing charges.[12] Because of these added precautions, it is unlikely that the Commission can complete even perfunctory reviews of LEC filings for "new" services within the 7-day or 15-day period required for streamlined treatment. Consequently, if these filings are "streamlined," the Commission would not be reasonably able to assure that "new" service offerings were in the public interest prior to the service becoming effective.

In an effort to protect ratepayers, the Commission could adopt a practice of "preliminarily" suspending and investigating new service tariffs eligible for streamlined

---

11. Id., paragraph 17 (emphasis added).

12. Id., footnote 42.

treatment. But, such a practice would be inefficient and subvert the objective of streamlining. This practice could also reduce the timely consideration of other LEC filings that should be streamlined. For these reasons, GSA recommends that LEC tariff filings containing "new" services should not be eligible for streamlined treatment.

Finally, the Commission solicits comments regarding its authority under Section 10(a) of the Act to establish permissive or mandatory detariffing of LEC tariffs.[13] This new Section explicitly requires the Commission to forebear from applying any regulation or provision of the Act, if it determines that:

> (1) enforcement of such regulation or rule is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with [a] telecommunications carrier or telecommunication service are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.[14]

Nothing in Section 204(a)(3) or Section 10(a) restricts the Commission's forbearance authority from applying to LECs or to the services LECs provide. The Commission tentatively concludes that it may exercise its forbearance authority under Section 10(a) for this purpose, notwithstanding Section 204 (a)(3). GSA concurs with this conclusion.

---

13. Id., paragraph 19.

14. Section 401 of the Act, creating new Sections 10(a)(1), (2), and (3).

IV. Streamlined Administration of LEC Tariffs

A. Electronic Filing

In furtherance of its efforts to achieve a more streamlined and deregulated environment for administration of LEC tariff filings, the Commission intends to establish an electronic filing system under which carriers file tariffs and related material.[15] Central to the creation of an electronic system is its administration. The Commission tentatively concludes that the carriers themselves should be responsible for organizing, posting, and supervising the electronic tariff filing system.[16] GSA concurs with this conclusion.[17] The electronic filing system will directly benefit carriers by reducing the tariff administration expenses they presently incur. Consequently, maintaining the system should be their responsibility.

However, GSA believes that additional mechanisms are necessary to enable the Commission to fulfill its oversight responsibilities to ratepayers. Among these mechanisms should be a procedure whereby the Commission can confirm the successful transmission

---

15. NPRM, paragraph 21.

16. Id., paragraph 22.

17. GSA also filed comments in CC Docket No. 96-61 on April 25, 1996, explaining the importance of using electronic bulletin boards as a means of consumer protection.

of tariff filings. Without this procedure, the exact timing of the filing cannot be established and the 7-day or 15-day tariff review deadlines cannot be accurately determined.

Additionally, the Commission should prescribe the format of carrier filings. Unlike paper tariff filings, there is no assurance that electronically filed tariffs are in a form accessible to and readable by the Commission and users. Thus, in addition to confirming the receipt of a filing, the Commission should provide a procedure whereby it also confirms that the filing meets a prescribed format.

The Commission tentatively concludes that such filings should be submitted using a specific database software program.[18] While GSA concurs with this conclusion, the Commission should recognize that wide variations in file characteristics (macros, file size, borders, sheets, formulae, etc.) exist within the program, so there may be considerably more to the proposed standardization than just adopting a common software vehicle.

B. Exclusive Reliance on Post-Effective Tariff Review

The Commission solicits comments on whether it can, and should, adopt a policy of using only post-effective review of certain tariff filings in determining LEC compliance with Title II of the Act. The Commission notes that such a policy could "significantly streamline the tariff review process while continuing to provide for post-effective-date evaluation of the lawfulness of tariffs."[19] However, the Commission also notes that such

---

18. Id., paragraph 22.

19. Id., paragraph 23.

a policy "could limit remedies available for redress of unlawful LEC tariffs especially if... 'deemed lawful' means that damages may not be awarded retroactively."[20] GSA is concerned that reliance on post-effective review of LEC tariff filings will put ratepayers at risk, regardless of whether damages may be awarded retroactively.

If tariffs that become effective without investigation or suspension are not subject to retroactive damages, ratepayers could be forced to subsidize carriers by paying charges that the Commission may later determine to be unlawful. Indeed, LECs could be free to charge what the market will bear until the Commission prohibits an unlawful charge. Ratepayers would have to continue paying the charge during the interim.

If, on the other hand, tariffs that become effective without investigation or suspension are subject to retroactive damages, ratepayers are still at risk. Because tariffs that become effective in this manner are "presumed" to be lawful, the burden of proof shifts from the carrier to the complainant. In this scenario, ratepayers would be required to demonstrate that a charge is unlawful and that damages of a certain size have occurred. This is very different than a carrier being required to demonstrate that a charge is just, reasonable, and non-discriminatory.

To the extent post-effective reviews are necessary for tariffs filed on a streamlined basis, GSA urges the Commission not to rely on such reviews for tariffs containing rate increases. These tariffs pose the greatest risk to ratepayers and should be reviewed on

---

20. Id., paragraph 23.

a pre-effective basis as much as possible. Limiting the use of post-effective reviews for these tariffs does not appear to be contrary to Congress' intent to "streamline" the tariff review process.

C. Pre-Effective Tariff Review of Streamlined Tariff Filings

In contemplating the use of pre-effective tariff reviews for some LEC filings, the Commission seeks comments regarding the propriety of requiring LECs to file supporting data with tariffs filed on a streamlined basis.[21] The Commission also seeks comments regarding the type of supporting data that may be required, and whether or not such a requirement would be unduly burdensome on carriers.[22] On these points, the Commission proposes to require LECs to file, with their tariffs, supporting data, a summary of the proposed changes, a legal analysis of the effect of the changes and an estimate of the potential impact on customers that may result from the proposed changes. GSA finds the Commission's proposals to be appropriate and not overly burdensome on LECs. Such data would assist the Commission in determining whether to suspend and investigate a transmittal within the seven or fifteen day notice periods, and would aid interested parties in determining whether to challenge the filing.

Section 204(a)(3) states that LECs may file tariff changes on a streamlined basis. Because this is a permissive provision, the burden of selecting that option should rest with the LECs. Consequently, the LECs should be required to take affirmative actions to

---

21. NPRM, paragraph 25.

22. Id.

demonstrate to the Commission why a filing should not be suspended or investigated. Requiring LECs to provide this data would appear to be necessary for the Commission to make its assessments.

In addition, the Commission asks for comments regarding the appropriate notice period to apply to certain LEC filings. The Commission tentatively concludes that the 15-day notice period should apply to tariff filings that contain both rate increases and rate decreases.[23] Also the Commission proposes to require LECs to disclose in their tariff transmittals the type of tariff review option they wish to pursue for each filing. GSA concurs with these conclusions.

The Commission also asks for comments regarding whether a list of interested parties – which would receive e-mail notices of tariff filings – should be maintained.[24] GSA strongly concurs with this suggestion. E-mail notification is an important consumer protection aspect of the streamlined tariff review process.

In addition, the Commission seeks comments on its proposed procedures for filing periods for petitions and replies.[25] Because of the substantially reduced review period for LEC tariffs filed on a streamlined basis, the Commission's proposed petition deadlines are appropriate. However, with respect to the requirement for "hand-delivered" petitions and

---

23. NPRM, paragraph 26.

24. Id., paragraph 26.

25. The Commission proposes to require petitions against LEC tariffs to be filed within 3 days after the tariff is filed, and replies to be filed within 2 days after a petition is filed.

replies, the Commission should restrict this requirement to commercial entities only. Without an express restriction of this kind, a typical ratepayer may reasonably conclude they are ineligible from filing such petitions if hand-delivery is not possible.

Finally, the Commission solicits comments on whether it should routinely impose protective orders when LECs claim, in good faith, that a filing contains confidential information.[26] The Commission rightly recognizes that competing interests exist with respect to requests for confidential treatment of cost data. However, GSA does not believe a standard protective order should be imposed on a routine basis.

While LECs that file tariffs under the streamlined tariff review procedures should have the right to protect confidential information, interested parties should also have an opportunity to petition the Commission for access to this information. Because interested parties are allowed to petition the Commission for suspension and investigation of LEC tariffs filed on a streamlined basis, such parties may be inclined to automatically challenge filings which contain confidential information. This practice would increase the number of petitions for review, and the Commission would be required to either hear the petition on an extremely abbreviated time line (i.e., petitions filed within 3 days after LEC filing, and responses 2 days after that) or, grant the petition and suspend the tariff. Either scenario would effectively constrain the tariff review process, not streamline it.

---

26. NPRM, paragraph 29.

The Commission must, therefore, establish some criteria which LECs must meet to obtain protected treatment of confidential information. Petitions from interested parties would only be granted if the LEC's filing fails to meet this criteria.

D. Annual Access Tariff Filings

The Commission seeks comments on its proposals to modify the process of filing annual access tariffs.[27] While Section 69.3(a) does not specify a requirement for supporting data, such authority is stated in Sections 61.38 and 61.39. The Commission proposes requiring the separation of rate changes from supporting data for price cap LEC tariff filings. GSA supports this proposal.

Because the Commission may require any LEC to submit supporting data as it deems necessary for it to review LEC tariffs, this requirement appears consistent with the Act. Moreover, separating supporting data from rate changes would also provide interested parties with the necessary information with which to review LEC filings quickly when they are submitted 7 days prior to July 1 (the annual access tariff filing date), without prejudging the LECs filing.

27. NPRM, paragraph 31.

E. Investigations

The Commission solicits comments whether it should establish an expedited investigation process in light of the shortened filing deadlines.[28] GSA does not believe such processes are necessary at this time.

Section 204(a)(1) places the burden of proof for any rate changes or revisions squarely on the carriers. Further, the Commission is required to complete its consideration of LEC tariffs within five months after the effective date of the filing. If the Commission has not been persuaded by its investigation that the proposed tariff is just and reasonable, the Commission can simply reject it. The possibility of an adverse decision against its filing should provide sufficient incentive for a LEC to facilitate the Commission's investigation.

VI. Conclusion

As the agency vested with the responsibility for representing the customer interests of all Federal Executive Agencies, GSA urges the Commission to conclude that the legal status of LEC tariffs should be modified only with respect to the burdens of suspensions and investigations undertaken by the Commission, not with respect to changes to the lawfulness of tariffs filed on a streamlined basis. Further, GSA urges the Commission to implement its proposals to establish an electronic tariff filing system, and adopt the

---

28. Id., paragraph 33.

administrative procedures as outlined herein as soon as possible. The benefits of competitive telecommunications markets accrue to end users and carriers alike, and the Commission has taken important steps with this NPRM to realize these benefits.

Respectfully submitted,
EMILY C. HEWITT
General Counsel

VINCENT L. CRIVELLA
Associate General Counsel
Personal Property Division

Michael J. Ettner

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

Jody B. Burton

JODY B. BURTON
Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
18th & F Streets, N.W., Rm. 4002
Washington, D.C. 20405
(202) 501-1156

October 9, 1996

General Services Administration **October 9, 1996**

CERTIFICATE OF SERVICE

I, Jody B. Burton, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 9th day of October, 1996, by hand delivery or postage paid to the following parties:

Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Jerry McKoy
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

International Transcription Service, Inc.
Suite 140
2100 M Street, N.W.
Washington, D.C. 20037

Paul Schwedler, Esquire
Asst. Regulatory Counsel, Telecommunications
Defense Info. Agency, Code AR
701 South Courthouse Road
Arlington, VA 22204-2199

SERVICE LIST
(CONT'D)

Edith Herman
Senior Editor
Communications Daily
2115 Ward Court, N.W.
Washington, D.C. 20037

Telecommunications Reports
11th Floor, West Tower
1333 H Street, N.W.
Washington, D.C. 20005

Richard B. Lee
Vice President
Snavely King Majoros
O'Connor & Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005